IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIRST DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NOs : 10917 of 1995 and 16596 of 1995

WRIT PETITION No.10917 of 1995:

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Between:

Santhosh Kumar Agarwal (HUF), 15-1-540/B2/4, I Floor,
Hilal Market, Old Feelkhana, Hyderabad

..... PETITIONER

AND

1 The Central Board of Direct Taxes rep. by Director
North Block, Central Secretariat Buildings, New Delhi-01
2 The Chief Commissioner of Income Tax A.P.
8th Floor, Ayakar Bhavan, Basheer Bagh, Hyderabad-29
3 The Union of India rep. by Secretary
Ministry of Finance, Sastry Bhavan, New Delhi

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ or Direction including a Writ in the nature of Certiorari to quash and set aside the said Circular No.681, dt: 8-3-1994 issued by the 1st respondent in so far as it requires the deduction of tax at source under Sec. 194-C of the Act in respect of the payment of transport charges.

Counsel for the Petitioner:MR.B.NARAYANA REDDY

Counsel for the Respondents: S.R.ASHOK

WRIT PETITION NO.16596 OF 1995

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Between:

N. Srinivasa Rao S/o Bapi Raju,D.No.10-7013, Rangireejupeta,
Rajahmundry, East Godavari Dist.

..... PETITIONER

AND

1 Central Board of Direct Taxes rep. by Director
North Block, New Delhi-110011
2 The Chief Commissioner of Income-Tax, A.P.
Off: 8th Floor, Ayakar Bhavan,
Basheer Bagh, Hyderabad-500029
3 The Union of India rep. by Secretary
Ministry of Finance, Shastri Bhavan,
New Delhi

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ order or Direction including a Writ in the nature of "Certiorari" to quash, to quash and set aside the said Cir.No.681, dt: 8-3-94 issued by the 1st Respondent in so far as it requires the deduction of tax at source under Sec.194-C of the Act in respect of the payment of transport charge.

Counsel for the Petitioner:MR.M.V.DURGA PRASAD

Counsel for the Respondent No.: MR.S.R.ASHOK

The Court made the following

COMMON ORDER (Per the Hon'ble Sri Justice Bilal Nazki).

Heard learned counsel for the parties.

The petitioners had challenged the action of the respondents, in making deductions at source, on the ground that deductions at source were not admissible as the contract in question was a mere contract of transport of goods.

While entertaining the writ petitions, this Court passed the following order:

> *"Learned Standing Counsel for the Income-Tax Department will file counter within six weeks. Reply to which, if any, will be filed within two weeks thereafter.*
>
> *In the meantime, it is provided as an interim measure that there will be no deduction at source, provided the contract, in question, is a mere contract for transport of goods and does not involve any other services including loading and unloading. It is provided that in case the writ petition is dismissed, the petitioner shall pay the amount of tax within one week from the date of pronouncement of the judgment."*

In view of the order of this Court, passed at the time of entertainment of the writ petitions, the respondents were not in a position to deduct tax at source and in view of this order, no further orders are necessary to be passed in these writ petitions.

However, the order passed earlier provided that if writ petitions are dismissed, the petitioners shall pay the amount of tax within one week from the date of pronouncement of judgment. But, we understand that since the deduction was not made at source, nobody at the moment would be in a position to know as to whether tax was to be paid by the petitioners and if so, what amount.

For these reasons, while dismissing these writ petitions, we clarify that the respondents shall be at liberty to take appropriate steps available in law for recovery of tax due, if any, from the petitioners. No order as to costs.

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(BILAL NAZKI, J)

1st September, 2004

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(S.ANANDA REDDY, J)

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To

1 The Director, Central Board of Direct Taxes, North Block,

New Delhi-110011

2 The Chief Commissioner of Income-Tax, A.P.
Office at 8th Floor, Ayakar Bhavan,
Basheer Bagh, Hyderabad-500029

3 The Secretary, Union of India, Ministry of Finance, Shastri

Bhavan, New Delhi

4 Two C.D copies